

The medical report in question is a public document. Section 74 of the Evidence Act 1950 provides that public documents are documents forming the acts or records of the acts of '... public officers, legislative, judicial and executive, whether Federal or state'. A 'public officer' is defined in the Interpretation Act 1967 as a person lawfully holding, acting in or exercising the functions of a public office; and 'public office' is defined in the same Act as an office in any of the public services. The public services are enumerated in art 132(1) of the Federal Constitution and includes the general public service of the Federation. The medical service is not expressly provided in art 132, but members of the medical service form part of the general public service and come under the jurisdiction of the Public Services Commission. See Tun Mohamed Suffian bin Hashim, *An Introduction to the Constitution of Malaysia* (2nd Ed) at p 133.

Since medical officers are members of the public service, they are therefore public officers and the reports of their medical examinations are public documents. Although medical reports are public documents, not every person has access to it or has the right to ask for copies of the documents. Section 76 of the Evidence Act 1950 states:

Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate, written at the foot of the copy of the document or part thereof, as the case may be, and the certificate shall be dated and subscribed by the officer with his name and his official title, and shall be sealed whenever the officer is authorized by law to make use of a seal, and the copies so certified shall be called certified copies. (Emphasis added.)

It is clear from the section quoted above that if a person has the right to inspect a document, then he should be supplied with a copy of the document on payment of the prescribed fee. A person has the right to inspect a document if he has an interest in that document and the inspection is necessary for the protection of his own interest. See *Anthony Gomez v Ketua Polis Daerah Kuantan*¹ and *Khoo Siew Bee & Anor v Ketua Polis, Kuala Lumpur*.²

In the present case, the applicant definitely has an interest in his own medical report and it is obvious that he needs a copy of the report to protect his own interest especially when he has made the allegation that he was beaten by the police. In the circumstances, he is entitled to be supplied with a copy of his medical report without any prior written approval from the police. The medical officer concerned or Hospital Sultanah Aminah is obliged to supply a copy of the report as requested by the applicant on payment of the prescribed fee.

For the reasons stated above, I make the following order:

- A (1) The medical report pertaining to the examination of the applicant is a public document.
(2) The applicant is entitled to purchase a copy of the said medical report on payment of the prescribed fee.
(3) Hospital Sultanah Aminah, Johore Bahru shall supply a copy of the said report to the applicant or his solicitors upon payment of the prescribed fee.

B

I order that the costs of this application be costs in the cause.

Application allowed.

C Solicitors: *RK Menon & Co.*

Reported by *Zarinah Marican*

D

Re Loh Kah Kheng (deceased) (No 2)

HIGH COURT (PENANG) — INQUIRY NO 98-96-87
MOHAMED DZAIDDIN J
2 FEBRUARY 1990

E

Criminal Procedure — Inquiry into death — Duty of magistrate — Whether strict rules of evidence apply — Evidence Act 1950, s 122

This is a revision as to the correctness, legality, or propriety of the magistrate's decision on the applicability of s 122 of the Evidence Act 1950 to the inquiry into the death of one Loh Kah Kheng. The issue before the court was whether by virtue of that section, the learned magistrate should have prohibited the deceased's widow from disclosing communications made to her by the deceased during the marriage. The magistrate had ruled that the section did not apply to the inquiry.

F

Held, affirming the magistrate's ruling:

G

(1) The rules of evidence still apply in a magistrate's inquiry under Chapter XXXII of the Criminal Procedure Code but the magistrate is not bound to follow it strictly.

(2) The magistrate's primary function at an inquiry into death is to ascertain the cause of death and where there is a suggestion that the deceased could have died as a result of suicide, the magistrate should be given greater latitude to hear any evidence, including that of the widow of the deceased, in order to arrive at a verdict. She could therefore admit any evidence which she thought fit in the circumstances.

H

[*Editorial Note:* An appeal to the Supreme Court has been filed on behalf of Tan Sri Loh Boon Siew and the widow vide Criminal Appeal No 07-7-90.]

I

Cases referred to

- 1 *Nawab Howlander v R* (1914) IC Vol XXXIII 511 (refd)
2 *R v Divine* [1930] All ER 302 (foldd)

Legislation referred to

Evidence Act 1950, s 122
Criminal Procedure Code (FMS Cap (6) ss 327, 328

Abdul Karim bin Abdul Jalil for the Public Prosecutor.
Ghazi bin Ishak for Tan Sri Loh Boon Siew.
P Vijendran for the widow.

Cur Adv Vult

Mohamed Dzaidin J: The object of this revision is to satisfy myself as to the correctness, legality or propriety of the magistrate's decision on 16 January 1990 where she held that s 122 of the Evidence Act 1950 did not apply in the present inquiry conducted by her to determine the cause of death of Loh Kah Kheng, deceased.

Section 122 of the Evidence Act 1950, which deals with communications during marriage, states:

No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication unless the person who made it or his representative in interest consents, except in suits between married persons or proceedings in which one married person is prosecuted for any crime committed against the other.

Encik Ghazi, counsel for deceased's estate, submitted before the learned magistrate and repeated before me that by virtue of s 122 and relying on *Nawab Howlander v R*,¹ the learned magistrate should have prohibited Mdm Shirley Yap, the deceased's widow, from disclosing communications made to her during marriage by the deceased. Counsel further submitted that clearly s 122 prohibited Mdm Yap from disclosing any communication made by the deceased to her because not only could she not be compelled to disclose any communication, but she should not have been permitted to disclose it because there was no longer her husband who could consent to the disclosure. In *Nawab Howlander*,¹ the prosecution in a murder trial sought to rely on the statements to which the widow deposed had been made to her by her husband in connection with a murder, immediately before his death. The Calcutta High Court, sitting as an appellate court, excluded the widow's disclosure from consideration on the ground of s 122 of the Indian Evidence Act 1950. It held that not only that she could not be compelled to disclose those communications but that she should not have been permitted to disclose the same, for there was no one who did or could consent to the disclosure.

From the evidence so far recorded by the learned magistrate from Mdm Shirley Yap, it appears to me that Encik Ghazi's objection is to prevent Mdm Yap from disclosing to the magistrate communications purportedly made by the deceased to her which would show, according to her counsel, Encik Vijendran, that the deceased had suicidal intent prior to his death. Therefore, in circumstances like this, was the magistrate bound by s 122 of the Evidence Act?

After hearing counsel, the DPP and after considering the authorities cited, I must say without any doubt in my

A mind the magistrate was correct in her decision. My reason for agreeing with her is based on the premise that this is a magistrate's inquiry and not a criminal trial and therefore I adopt the same principle which I applied in the previous revision (PJ 43-10-89), citing from *Mallal's Criminal Procedure* (4th Ed) at p 485 concerning the function of a coroner:

The coroner examines witnesses on oath and will usually follow the ordinary rules of evidence. He may admit any evidence which he thinks fit, especially hearsay evidence. His duty is to ascertain the cause of death and he is not bound to follow the usual procedure of law courts.

C It must, however, be emphasized that the rules of evidence under the Evidence Act 1950 still apply in a magistrate's inquiry under Chapter XXXII of the Criminal Procedure Code but the magistrate is not bound to follow it strictly (*R v Divine*² at p 307).

D Secondly, I take into consideration here that the magistrate's primary function at the inquiry is to ascertain the cause of death which is defined under s 328 to include 'not only the apparent cause of death as ascertainable by inspection or post-mortem examination of the body of the deceased, but also all matters necessary to enable an opinion to be formed as to the manner in which the deceased came by his death and as to whether his death resulted in any way from, or was accelerated by, any unlawful act or omission on the part of any other person'. Thus, the magistrate carries out this inquiry by taking evidence from witnesses. Where, especially in the present inquiry, there is suggestion by one party that the deceased could have died as a result of suicide, it becomes the onerous duty of the magistrate to hear and receive evidence as to 'when, where, how and in what manner the deceased came by his death'. In this respect, in my opinion, greater latitude ought to be given to the magistrate concerned to hear any evidence in order to arrive at her verdict. She could therefore admit any evidence which she thought fit in the circumstances.

Having stated the above, the bottom line of the matter is that the learned magistrate was correct in her ruling and, accordingly, I make no order under s 327 of the Criminal Procedure Code.

No order made.

Solicitors: *Presgrave & Matthews; RR Chelliah Brothers.*

Reported by *Mathavan Devadas*

I